



## DEPARTMENT OF VETERANS AFFAIRS

8320-01

Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of Amendment of System of Records

**SUMMARY:** The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the Federal Register a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled "Alternative Dispute Resolution Tracking System-VA" (116VA09). The Department is re-publishing the system of records notice in its entirety.

**DATES:** Comments on this amended system of records must be received no later than [Insert date 30 days after date of publication in the Federal Register]. If no public comment is received, the amended system will become effective [Insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand delivery to the Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4938 for an appointment. In addition, during the

comment period, comments may be viewed online through the Federal Docket Management System (FDMS).

**FOR FURTHER INFORMATION CONTACT:** Gregory A. Burke, Ombudsman, Office of Resolution Management (08), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461-0225.

**SUPPLEMENTARY INFORMATION:**

The Department established the system of records entitled “Alternative Dispute Resolution Tracking System-VA” (116VA09) in 67 FR 49392-49395 (July 30, 2002). The system of records tracked alternative dispute resolution (ADR) activity within VA. VA placed the responsibility for managing the system of records upon the Dispute Resolution Specialist (DRS), then the Chairman of the Department’s Board of Contract Appeals (09) (the Chairman). The “09” designation within “116VA09” reflected the designation of the Chairman (09) within the Department. The Administrative Dispute Resolution Act, as amended, requires the designation by each Federal agency of a senior official to serve as its DRS. Public Law 101-552, Sec. 3(b), 104 Stat. 2737 (1990).

On January 6, 2006, Congress enacted Public Law 109-163. Section 847 of that Act terminated the VA Board of Contract Appeals on January 6, 2007. Consequently, the position of Chairman of the VA Board of Contract Appeals also terminated on January 6, 2007.

In anticipation of the termination of the VA Board of Contract Appeals, on July 14, 2006, the VA’s Deputy Secretary approved the reassignment of the DRS function to the Assistant Secretary for Human Resources and

Administration. Authority for Workplace ADR was further delegated to the Deputy Assistant Secretary for Resolution Management, also known as Deputy DRS for Workplace ADR (08). In that capacity, the Deputy DRS for Workplace ADR became responsible for the system of records entitled “Alternative Dispute Resolution Tracking System-VA” (116VA09), including management, notification, and record access procedures.

The Department intends to modify the system of records entitled “Alternative Dispute Resolution Tracking System-VA” (116VA09) to: (1) rename and renumber the system of records as “Historical Alternative Dispute Resolution Data-VA” (116VA08); (2) designate the Deputy DRS Workplace ADR (08) as the system’s manager and official responsible for maintaining the system of records; and (3) reflect that the Deputy DRS Workplace ADR (08) will manage the renamed “Historical Alternative Dispute Resolution Data-VA” (116VA08) system of records in lieu of the then DRS and Chairman of the VA Board of Contract Appeals (09).

When adopted in 2002, the currently named “Alternative Dispute Resolution Tracking System-VA” (116VA09) was the sole method used to collect ADR data VA-wide. VA is establishing a new system of records titled the “Alternative Dispute Resolution (ADR) Tracking System-ADRTracker-VA” for collection of ADR data. These two systems of records are separate and incompatible. Although the systems of records contain similar data elements, such data are collected and used for different purposes. VA now uses the

“Alternative Dispute Resolution Tracking System-VA” (116VA09) for historical reference and reports.

VA has determined to rename the “Alternative Dispute Resolution (ADR) Tracking System-VA” (116VA08), the earlier system of tracking ADR data, as the “Historical Alternative Dispute Resolution Data-VA” (116VA08) system of records to reflect its primarily historical use and to minimize confusion.

VA is also proposing to amend two routine uses and establish two new routine use disclosures of information maintained in the “Historical Alternative Dispute Resolution Data-VA” (116VA08) system of records, as renamed and renumbered:

1. VA is amending use 2 to permit disclosure to the General Services Administration (GSA) in connection with records management inspections conducted under title 44, U.S.C.

2. VA is amending routine use 5 to reflect the limitations of the names and home addresses of Veterans and their dependents contained in 38 U.S.C. 5701(a), which provides that the agency may disclose this information only as permitted by that statute. VA may not promulgate a routine use authorizing disclosure of information that is barred by another confidentiality statute applicable to that information.

3. VA is adding routine use 12 to the system of records to authorize the agency to disclose information to other Federal agencies when they need the information to prevent fraud or abuse of their programs by individuals.

4. In December 2006, Congress enacted the Veterans Benefits, Health Care and Information Technology Act of 2006 (the Act), Public Law 109-461, 120 STAT. 3403. Section 902(b) of the Act also added a new subchapter III, Information Security, to Chapter 57 of title 38, United States Code. Section 5724 requires VA to conduct an independent risk analysis (IRA) when VA has experienced a data breach involving the sensitive personal information of those individuals. The section also requires VA to provide credit protection services to those individuals if VA determines after the IRA that there is a reasonable risk for potential misuse of the individuals' sensitive personal information. In order to conduct the IRA and provide credit protection services, if appropriate, VA will have to disclose the sensitive personal information of these individuals to the entities performing the IRA and providing the credit protection services. Further, the Office of Management and Budget (OMB) also directed all Federal agencies in OMB Memorandum 07-16 to promulgate routine uses to be able to disclose Privacy Act-protected information where necessary to respond to data breaches. The OMB Memorandum is available at <http://www.whitehouse.gov/omb/memoranda/fy2007/m07-16.pdf>.

VA is adding routine use 13 to the system of records to implement section 5724 of title 38 and to comply with the guidance issued by OMB.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of

the information will use the information in connection with a matter relating to one of VA's programs or will use the information to provide a benefit to VA, or disclosure is required to protect VA records, the subjects of those records, or the integrity of Federal programs. The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: October 21, 2011

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John R. Gingrich, Chief of Staff  
Department of Veterans Affairs

## **116VA08**

**SYSTEM NAME:** "Historical Alternative Dispute Resolution Data-VA".

**SYSTEM LOCATION:** VA stores data from the System of Records at the Capital Region Data Center, 882 T J Jackson Drive, Falling Waters, WV 25419. The originals of related documents are maintained in the Office of the Assistant Secretary for Resolution Management, 810 Vermont Avenue, NW, Washington, DC 20420, under lock and key.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** The records contain information about VA employees and other individuals who have participated in a VA alternative dispute resolution program or dispute resolution.

**CATEGORIES OF RECORDS IN THE SYSTEM:** The records may contain information related to the name, grade, and step of the ADR requesters and respondents; the type of ADR requested, e.g., mediation or arbitration; the type of ADR used; the source of the individual(s) conducting the ADR, e.g., another Federal agency; the grades and steps of the individuals conducting the ADR process; administrative data on the particular ADR case, e.g., date requested; date concluded and total hours spent on the ADR; the nature of the dispute, e.g., discrimination or harassment; the stage in the dispute in which ADR is inserted; the jurisdictional forum in which the dispute was located when ADR was requested; any waiver of rights under 29 CFR part 1614; the terms of any settlement agreement, e.g., damages, attorneys fees, reassignment; and the satisfaction of the parties with the ADR process and the source of the neutral third party who conducted the procedure, e.g., the facility's program, a local

shared neutral's program, the national program, or a private, non governmental program.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** Title 5, United States Code, sections 571–584; Federal Acquisition Regulation; Part 33, Protests, Disputes, and Appeals and/or VA Acquisition Regulation, Part 833, Protests, Disputes, and Appeals; and Title 29, Code of Federal Regulations, Part 1614.

**PURPOSE(S):** VA will use the information to track and monitor agency dispute resolution activities at the local level. VA also intends to analyze the data to evaluate ADR utilization VA-wide, identify agency ADR best practices, and determine whether certain forms of ADR may be more appropriate in various types of cases.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.
2. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under the authority of title 44, U.S.C.
3. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear

when: (1) the agency, or any component thereof; (2) any employee of the agency in his or her official capacity, where DOJ or the agency has agreed to represent the employee; or (3) the United States, when the agency determines that litigation is likely to affect the agency or any of its components; is a party to litigation, and has an interest in such litigation, and the use of such records by DOJ or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that the disclosure is compatible with the purpose for which the records were collected.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in this system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and home addresses of Veterans and their dependents

to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal, or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

6. Disclosure may be made to an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

7. Disclosure may be made to the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) in order for them to perform their responsibilities for evaluating Federal programs.

8. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. Chapter 71, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

9. Information may be disclosed to officials of the Merit Systems Protection Board or the Office of the Special Counsel when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or for other functions of the Commission as authorized by law.

11. Information may be disclosed to the Federal Labor Relations Authority (including its General Counsel) when appropriate jurisdiction has been established and the information has been requested in connection with the investigation and resolution of allegations of unfair labor practices or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; and to the Federal Service Impasses Panel in matters they are considering.

12. VA may, on its own initiative, disclose information to other Federal agencies to assist them in preventing and detecting possible fraud or abuse by individuals in their operations or programs.

13. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, or persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the

potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protect services as provided in 38 U.S.C. 5724 as the terms are defined in 38 U.S.C. 5727.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:** Records are maintained on the VA's Office of Resolution Management Web Server System in the Citizens Disaster Response Center (CDRC) in Falling Waters, West Virginia.

**RETRIEVABILITY:** Records are retrieved by employee name, VA ADR case number, VA EEO case number, or VA facility number of the parties who participate in the VA ADR process.

**SAFEGUARDS:** Access to and use of these records is limited to those persons whose official duties require such access. Access to the VA Historical Alternative Dispute Resolution Data system of records is controlled by using an individually unique user identification code. Physical access to the facility where the "VA Historical Alternative Dispute Resolution Data" is maintained and controlled at all hours by the Federal Protective Service, VA, or other security personnel and

security access control devices. Public use files prepared for purposes of research and analysis are purged of personal identifiers.

**RETENTION AND DISPOSAL:** Records are maintained during the employee participant's for a period of 20 calendar years and subsequently disposed of in accordance with records disposition authority processes established by the Archivist of the United States.

**SYSTEM MANAGER(S) AND ADDRESS:** Official responsible for policies and procedures: Deputy Assistant Secretary for Resolution Management, also known as the Deputy Dispute Resolution Specialist for Workplace ADR (08), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

**NOTIFICATION PROCEDURE:** Individuals who wish to determine whether this system of records contains information about them should address written inquiries to Deputy Dispute Resolution Specialist for Workplace ADR (08), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Inquiries should include: (1) the individual's name and address; (2) VA ADR or EEO case number, if known; and VA facility or facility number where the individual was employed or applied for employment.

**RECORD ACCESS PROCEDURE:** Individuals seeking information regarding access to and contesting of records in this system may write the Deputy Dispute Resolution Specialist for Workplace ADR (08), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

**CONTESTING RECORD PROCEDURES:** (See Record Access Procedures above.)

**RECORD SOURCE CATEGORIES:** Information in this system of records is provided by employees who serve as local ADR program coordinators who obtain information from the ADR program participants.

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